No. 11,554

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

J. R. MASON,
Appellant,

vs.

MERCED IRRIGATION DISTRICT,
Appellee.

BRIEF FOR APPELLEE.

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QUESTION PRESENTED.

This appeal is from a supplemental order entered in a composition proceeding commenced in 1938 under the provisions of Chapter IX of the Bankruptcy Act (11 USCA Sec. 401 to 404). Merced Irrigation District, hereafter referred to as the District, is the debtor in the proceeding and is the present appellee. Mr. Mason, one of the bondholders of the District, is the appellant. The main proceedings, including approval of the plan of composition and entry of the interlocutory and final decrees, were concluded many years ago as will appear hereafter in detail. After the interlocutory decree approving the plan of composition became final, the vast majority of the bondholders surrendered their bonds and were paid off at the com-

position rate. Subsequently the District deposited money in Court sufficient to retire all remaining bonds on the same basis and, except for Mr. Mason's bonds, all of these too have been so retired with certain negligible exceptions we will mention later.

Mr. Mason is the owner of District bonds in the face amount of $18,000.00. (R(9242) 118.) At the composition rate this would entitle him to $9,270.18. (R. 110.) But Mr. Mason has consistently and repeatedly refused to take this money and surrender his bonds. The lower Court after giving him every opportunity to participate as the other bondholders had done finally held that he was no longer entitled to the money for detailed reasons hereafter appearing, and ordered the money remaining on deposit returned to the District and the proceedings finally terminated. Mr. Mason on this appeal questions the propriety and validity of this order.

The case has twice before been before this Court on Appeal. The interlocutory decree was approved here[1] and the final decree was likewise.[2] Certiorari and rehearing were denied by the United States Supreme Court in each instance.[3] The present parties have

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[1] *West Coast Life Insurance Company v. Merced Irrigation District*, Case No. 9242, 114 Fed. (2d) 654; Certiorari denied by the United States Supreme Court in *Pacific National Bank of San Francisco v. Merced Irrigation District*, 61 S. Ct. 441, 311 U.S. 718, 85 L. Ed. 467; Rehearing denied, 61 S. Ct. 620, 312 U.S. 714, 85 L. Ed. 1144.

[2] *Mason v. Merced Irrigation District*, Case No. 9955, 126 Fed. (2d) 920; Certiorari denied, 63 S. Ct. 38, 317 U.S. 645, 87 L. Ed. 520; Rehearing denied, 63 S. Ct. 153, 317 U.S. 707, 87 L. Ed. 564.

[3] See footnotes 1 and 2, supra.

stipulated that the records on these two preceding appeals (cases Nos. 9242 and 9955) may be referred to in the present briefs. We will cite the transcript of record in this case as R ..... and the records in cases No. 9242 and No. 9955 as R(9242) ..... and R(9955) ..... respectively.

STATEMENT OF THE CASE.

A clear understanding of exactly what has occurred in this case is absolutely essential for a just consideration of the rights of the respective parties. While in most instances an injustice might appear to be done by returning to a debtor money deposited by it to pay off its obligations at a composition rate, in this instance there is no such injustice, and on the contrary such action was sound in principle and just at law. The Court below exercised great care and extreme caution in protecting every possible right of appellant. In fact we feel its indulgence of appellant went far beyond any necessary bounds. In short, it is our position that appellant has no legitimate complaint whatsoever as to his treatment in the lower Court. To show vividly the truth of this contention we would like to point out, somewhat in detail, exactly what did happen in this case up to the time of the entry of the order appealed from. These facts, more strongly than all the argument we could present, establish without question the thorough correctness of the District Court's order and the extent to which a legitimate right to hearing in Court has been exceeded and transgressed by appellant.

On June 17, 1938, the District filed its petition for composition of its bonded indebtedness (R(9242) 8). After extensive hearing, the Court approved the plan presented and on February 21, 1939, entered its interlocutory decree which provided that the bonds were to be discharged at the rate of 51.501¢ per dollar (R 2). The decree provided further for the mechanics of disbursing the sums to the bondholders, and for the eventual deposit of money with the Court to discharge at the composition rate all outstanding bonds not retired by the disbursing agent. This interlocutory decree was appealed from by Mr. Mason and others and was approved in this Court, certiorari and rehearing being then denied by the Supreme Court.[4] On April 1, 1941 the money was made available to the bondholders through a disbursing agent, as provided in the interlocutory decree, and the great majority of it was so disbursed. On June 2, 1941, in further accordance with the decree, the remaining sum was deposited with the Court as Registrar for payment to bondholders who had failed to redeem their bonds through the disbursing agent but who might thereafter desire to do so. Thereafter, on July 15, 1941, a final decree was entered (R 26). It ratified the disbursements which had been made, and approved the deposit with the Court of all necessary additional sums to redeem bonds still outstanding. It then discharged the District of all obligations included in the composition proceedings.

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[4]See footnote 1, supra.

As originally presented to the Court for signature, this final decree provided that in the event the holders of still outstanding bonds failed to surrender their bonds and accept payment at the composition rate within twelve (12) months, the money deposited would revert to the District and those outstanding bondholders would be forever barred (R 23). Since the time that the final decree was entered similar provisions have frequently been upheld.[5] However, at that time, the present appellant, Mr. Mason, objected to this time limitation and, therefore, the District Court revised the provision, and the decree as actually signed provided:

> "If any money shall remain in the hands of the Registrar after petitioner claims that the Statute of Limitations applicable to its still outstanding obligations, if any, has run, petitioner may so report to this Court for such further action respecting said money remaining in the hands of the Registrar as this Court may determine to be proper and for the final closing of this proceeding." (R 27).

The final decree, containing this language, was also appealed from by the present appellant, Mr. Mason, and it too was approved on appeal, certiorari and re-

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[5]*Mason v. Palo Verde Irrigation District,* 132 F(2d) 714, certiorari denied, 63 S. Ct. 982, 318 U.S. 785, 87 L. Ed. 1152, rehearing denied, 63 S. Ct. 1027, 319 U.S. 780, 87 L. Ed. 1725; *Mason v. El Dorado Irrigation District,* 144 F(2d) 189, certiorari denied, 65 S. Ct. 91, 323 U.S. 758, 89 L. Ed. 607, rehearing denied, 65 S. Ct. 187, 323 U.S. 816, 89 L. Ed. 649; *Mason v. Banta-Carbona Irrigation District,* 149 F(2d) 49, certiorari denied, 66 S. Ct. 98, 326 U.S. 757, 90 L. Ed. 455, rehearing denied 66 S. Ct. 166, 326 U.S. 808, 90 L. Ed. 493.

hearing again being denied by the United States Supreme Court.[6]

Nothing further of note then occurred in the case until July 20, 1946. By then more than five (5) years had elapsed since the money had been deposited in Court and the final decree entered. The District concluded that any possible applicable statute of limitations had therefore run, and, pursuant to the language of the final decree filed a petition praying that the money then remaining on deposit with the Court be returned to it and that the proceeding be finally terminated (R 30).

The initial hearing on this petition was had after due notice thereof on October 29, 1946, the District appearing by counsel and appellant appearing in his own behalf. After the presentation of some testimony and considerable argument, the Court propounded a question to the appellant as follows:

> "The Court. Are you willing to accept the amount which the other bondholders have accepted for their obligations?" (R 119).

Appellant gave no direct answer to this question. Instead considerable discussion ensued between him and the Court (R 119 to 126). The Court expressed a desire to allow appellant still to receive payment at the composition rate, provided he surrendered his bonds (R 123). However, appellant refused to give the Court a satisfactory answer to its question and eventually asked for an extension of time in which to

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[6]See footnote 2, supra.

consider it and in which to seek the advise of counsel (R 125). This the Court granted.

The Court convened again for further consideration of the matter on November 15. There was further argument, and remarks by the Court. The Court, in its remarks, took the position that it still had equitable authority in this matter and that if appellant were not barred by laches, which the Court at that time felt he was not, the Court would still be willing to grant him the money upon the surrender of his bonds (R 133). Further discussion was had between the Court and appellant from which the Court apparently concluded that appellant was willing to accept the money at the composition rate and surrender his bonds (R 155). So concluding, the Court directed that an order so providing be prepared by counsel for the District (R 155). An order, in accordance with the direction of the Court, was so prepared (R 58). Upon receiving a copy of this proposed order, and before it was signed, appellant filed objections to it (R 59). His objections concluded with the following prayer:

> "Wherefore, respondent prays that all the language following 'It is ordered that said petition be denied' in the proposed order be stricken, that the restraints in the final decree be lifted, on the ground that they are without warrant of law, and that the proceeding be dismissed. Should this prayer be denied, respondent requests the opportunity to present further argument, orally, before the proposed order is signed." (R 71).

The Court upon receiving appellant's objections ordered another and further hearing because it was

again in doubt as to appellant's position and as to whether he was willing to accept payment at the composition rate (R 72).

This hearing was had December 28, 1946. Appellant presented at length his reasons and views for objecting to the proposed order (R 157 to 186). The Court then made a complete statement and a careful analysis of the case (R 186 to 195) and concluded as follows:

> "It now appears that the court misapprehended Mr. Mason's attitude in the premises, and it now appears, and the court finds, that respondent Mason is not willing to comply with the suggested direction of the Court, as indicated by the record.
>
> "The court further concludes that laches have occurred and that there has also been sufficient time under any applicable statute of limitations for the determination of the money remaining in the fund.
>
> "The court concluding that it had jurisdiction over its fund, and it is the fund that is in question in this proceeding at this time, I would not be inclined to accept the suggestion of counsel for the District because of a desire to afford to those bondholders, including Mr. Mason, the opportunity to share in this money in preference to the Merced Irrigation District. But it must be done on the basis of the court's direction and not upon any other theory. Apparently, that is not satisfactory to Mr. Mason, so that counsel for the District will prepare an order along the lines suggested in his argument, and present that for signature, and it will be signed." (R 195).

The order was therefore prepared, and was signed by the Court December 31, 1946 (R 76). That order is the order appealed from. It will be noted, however, that even this order did not summarily prohibit appellant from participation in the fund. Even though it was held that appellant was then barred by applicable statutes of limitation and laches from participating in the fund, the District consented to, and the order allowed, a grace period of forty-five (45) days, during which time appellant was still allowed to claim the money (R 78). Appellant, however, continued to refuse to do so. Instead he has appealed here.

Before passing from this statement of the facts, we wish to point out an incorrect statement in appellant's brief. It was, of course, an unintentional misstatement, but we feel it should be corrected. He stated that bondholders other than himself had failed to surrender their bonds and indicated that the money deposited to discharge their bonds would revert to the District if this order were affirmed. This is not in fact correct since these other bondholders did surrender their bonds and accept payment at the composition rate during that final forty-five (45) day grace period. Appellant apparently did not receive word of this. In any event, outstanding now are only appellant's bonds, one bond the ownership of which is entirely unknown, and a few miscellaneous coupons. The amount in *custodia legis* is no longer $32,811.95 as appellant frequently states, but only $10,151.15.

REPLY TO APPELLANT'S SPECIFICATION OF ERRORS, AND ARGUMENT.

Legal basis for the order.

Before considering individually the errors claimed by appellant, we would like to point out generally the legal grounds warranting the order appealed from here. That order provided: (1) That every applicable statute of limitation had run on the district's obligation to appellant, and that therefore appellant was barred from claiming any of the money deposited with the Court. (2) That appellant was barred by laches from asserting any claim to such money. (3) That even though appellant was thus barred and his claim outlawed, the Court allowed him, with the District's consent, forty-five (45) days more in which to participate on the same basis as the other bondholders (R. 76). We strongly contend that each of these three provisions is legally sound and proper. However, we believe it is self evident that even if only one of them be legally correct, that provision alone, whichever one it may be, is fully sufficient in and of itself to justify the order. For whether appellant has become barred by a statute of limitations, or by laches, or because he failed to claim the money during the forty-five (45) days allowed, he has now certainly lost any and all rights he may have had. Of course, as originally stated, we are fully satisfied that all three provisions are completely proper and that each has full legal justification, but, in any event, to reverse the order below this Court must necessarily hold that all three provisions are improper.

Statute of limitations.

Appellant contends that he is not barred by any statute of limitations. The final decree provided that if any money remained in the fund deposited with the Court when it was claimed that the statute of limitations applicable to still outstanding obligations had run, the District could so report to the Court for further action and for final closing of the proceeding. The District filed its petition pursuant to this provision. The petition was filed more than five (5) years after the money was deposited with the Court and the final decree entered.

We do not take any dogmatic position as to what specific statute of limitations applies to such obligations. The District Court was of the opinion it had equitable jurisdiction of the disposition of the fund entirely independent of statutes of limitations and whether or not any had run. We will discuss these equitable considerations later. But in any event the applicable statute of limitations here could only be five (5) years or less. The obligation to deposit money against the bonds was created by the interlocutory decree in accordance with the Bankruptcy Act. This Act provides no statute of limitations for such an obligation. We must, therefore, turn to the State law to find the appropriate statute (28 USCA Sec. 725). On examining State law we find that the applicable statute must necessarily be one of the following:

> *Code of Civil Procedure 338:* "Within three years: 1. An action upon a liability created by statute, other than a penalty or forfeiture."

Code of Civil Procedure 337(1): "Within four years: 1. An action upon any contract, obligation or liability founded upon an instrument in writing. * * *"

Code of Civil Procedure 336: "Within five years: 1. An action upon a judgment or decree of any court of the United States or of any state within the United States."

Code of Civil Procedure 343: "An action for relief not hereinbefore provided for must be commenced within four years after the cause of action shall have accrued."

There is certainly no statute in excess of five (5) years which could possibly apply. We believe that this is either an obligation created by statute (i. e. the Bankruptcy Act), thus falling under Code of Civil Procedure Section 338, or is a claim based on a decree of a United States Court as specified in Code of Civil Procedure Section 336. The Court may prefer to fit it into one of the other categories. It makes no difference. For even if it be an obligation not covered specifically by one of the statutes, then by virtue of that very fact it falls under the four (4) year statute quoted above. The obligation is certainly barred by a lapse of time of more than five (5) years.

Appellant puts much stress on the case of *Moody v. Provident Irr. Dist.,* 12 Cal. (2d) 389. In that case matured bonds were presented for payment but could not be paid because of lack of funds. The treasurer of the District therefore endorsed on them that they

would bear interest at seven per cent (7%) from the time of presentation until notice that funds were available. The Court properly held that the statute of limitations was tolled by the new agreement, and that it would not again commence to run until funds were available and notice was given. No composition proceedings were involved in that case.

Here the situation is entirely different. There are at least three distinct differences. Firstly, the obligation created by the composition proceedings was a substantially new obligation. It was in the nature of a judgment. The obligation on the bonds was merged in it and the bonds thus lost their former significance and effect. It is this obligation created by the interlocutory decree that was the "still outstanding obligation" to which appellant refers so frequently. The law in the *Moody* case applicable to the bonds can have no application to such an obligation. Secondly, even if the doctrine of the *Moody* case were accepted, the statute would start to run when the money was available and appellant received notice thereof. The money was available to pay the obligation, when it was deposited in Court, and, of course, appellant had notice of this. So the requirements of the *Moody* case to start the running of the statute are specifically met. Thirdly, even though appellant contends he presented the bonds for payment as was done in the *Moody* case, and though we have no reason to doubt this fact, there is nevertheless no evidence in the record that this did in fact occur. For these several reasons then the *Moody* case can have no bearing here.

Before passing from the subject of the statute of limitations we wish to point out that such statutes are now definitely treated as meritorious legal defenses. They are no longer considered technical or inequitable. On the contrary they are now held to establish vested property rights and are looked upon with favor rather than skepticism.[7] Such a defense therefore is not one that a Court should attempt to avoid, and we fully believe that it is not a defense that the Court can avoid here. Although the District Court originally took the position that equitable power was involved and that the situation should be governed by laches rather than legal limitations, in its final order it declared that appellant was barred by both. It concluded that appellant had no standing in either equity or law and so applied both legal limitations and laches to bar his rights.

We believe that this obligation, created by the interlocutory decree, to pay approximately 51¢ on the dollar to outstanding bondholders created a legal obligation, and one subject to whatever statute of limitations would be applicable. We see no reason why it should be considered exempt therefrom. Even if it be a case for the application of equitable principles, a Court of Equity, though not bound by legal limitations, may give effect thereto in appropriate cases (19 Am. Jur. 342). This would certainly appear to be such a case. There is therefore a thor-

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[7]29 Cal. Law Rev. 210; *Fontana Land Co. v. Laughlin*, 199 Cal. 625, 250 Pac. 669, 48 A.L.R. 1308; *Loughman v. Town of Pelham*, 126 F(2d) 714.

oughly sound basis for the District Court's holding that this obligation is so barred.

Laches.

Appellant has persistently and continuously for many years refused to accept the deposited money and surrender his bonds. Though perhaps ill advised his actions have not been unadvised or casual. He has been granted stays by the Court for the specific purpose of getting legal advice on this very question. The Court has even expressed its own views and then given him a chance to decide. He has had opportunity after opportunity to share on this same basis as other bondholders, even after the District claimed that the Court had no power to give such opportunity, and even later yet when the Court actually made its ruling. Nevertheless he refused and apparently still refuses to participate on the basis judicially determined. He is certainly in a very poor position to ask for the protection of a Court of Equity. "The doctrine of laches being equitable in character, all facts and surrounding circumstances are to be considered in determining its applicability." (19 Am. Jur. cum sup. 22.) Therefore, even if the Court feels that the doctrine of laches, rather than legal limitations, should be applied in this case appellant is certainly no better off and must still be held to be barred.

In determining how long a period must pass before a person is guilty of laches, comparison is frequently made to legal statutes of limitation. (19 Am. Jur.

345.) The period of laches may be less or it may be more but the legal limitation is rightly used as a yardstick. As we have already shown, the legal limitation in this instance had necessarily passed when the District filed its petition. We believe that laches had also occurred at that time. But if for some reason appellant was entitled to more time the Court generously gave it to him, not just once but on several occasions. When the Court finally made the order appealed from there was no ruling it could logically make other than that laches had occurred.

Appellant contends that the doctrine of laches is inapplicable in this instance because there is no showing of injury to the District. Appellant's actions in no way entitle him to equity and under such circumstances his refusal to participate on the legally prescribed basis would seem in and of itself to work sufficient injury to justify the operation of laches. But the injury here is more than that. The District has been prevented all this time from closing the proceedings; it has been required to maintain its money on deposit with the Court; it has been forced to appear in Court in connection with this matter on several occasions. But the most important consideration is the excessive amount of the District Court's time that has been unnecessarily consumed. The judge below spent literally hours reasoning with appellant and attempting to induce him to share on the same basis as other bondholders. That appellant refused to do. If the doctrine of laches is to have any true equitable significance it can only be held to bar

appellant under these circumstances. Any other ruling would make a mockery of the Court. Appellant actually defies the Court and the law as declared by the Supreme Court.

Appellant apparently feels that his claim is protected against laches or the running of any statute of limitations by the provisions of Sections 851 and 852 of Title 28, USCA. It is true this section may prevent the Government from claiming money deposited in Court by virtue of a lapse of time, but it can certainly have no application where there are two contesting claimants to the fund as in this case. The money was deposited by the District to redeem its bonds in accordance with the judicial decree. The money certainly belongs to the District if the bondholder refuses to so redeem his bonds. The Government's interest is only that of a depositary, and it can therefore acquire no title to the money by the running of any time period. But as to the District, which is the owner of the money until such time as it is paid to the bondholder on the surrender of his bonds, laches and that statute of limitations most certainly can and have run.

The lower Court properly held that laches is a further bar to appellant's participation in the fund.

The 45-day provision.

Although the Court concluded that laches had occcurred and that appellant was barred by applicable statutes of limitation when it made its order, it gave him one further chance to participate in the

same manner as the other creditors. With the District's consent, it withheld refunding the money to the District for 45 days during which time appellant was authorized to surrender his bonds and receive payment at the composition rate. Laches and limitations had run and the District had thereby secured a vested property right in the remaining funds. Nevertheless, it consented to giving appellant another chance, and the Court made its order accordingly.

This is a perfectly proper procedure. Appellant argues that such a time limitation is improper under the authority of *Compton-Delevan Irr. Dist. v. Bekins,* 150 F. (2d) 526. In that case a time limit of one year was fixed in the final decree. However, the bondholders involved had no actual notice of entry of the interlocutory decree, or of entry of the final decree, or of the deposit of the money for payment at the rate provided. Such notice, though published, was never seen by these bondholders and never came to their attention. They were not personally notified although their address was of record and was known to counsel and the clerk of the Court. That case turned entirely on notice. But here appellant not only had notice and knew fully of every order and decree but appealed from each of the decrees and again from this order fixing the specified time limit. There is no analogy to the *Compton-Delevan* case.

On the other hand the authority to specifically fix a time limitation within which the bondholder must accept payment or be barred from participation has

been frequently and clearly adjudicated in this type of proceeding.[8] The purpose, of course, is to enable the eventual closing of the proceeding. If the creditor refuses to participate he cannot be allowed to prolong the proceeding and tie up the money forever.

Here the utmost time limit from the language of the final decree was the period of the statute of limitations. It might be less. In any event after that expired appellant was given more time on several occasions until finally the ultimate order was made that he was barred by laches and limitations. He then got another 45 days on top of all he'd had before, not of right, but because the District and the Court agreed to let him have it. He should be allowed no more time now. He is barred by limitations, by laches, and by an ultra legal period of grace.

In this regard we also want to point out that although the District Court has no authority to order a bondholder to surrender his bonds and accept payment at a composition rate it certainly can legitimately and conclusively tell that bondholder that if he does not do so within a certain time he can never do so. This is what the Court did and there is no error in its doing so.

Authority to make order after final decree became final.

Appellant complains that the District Court was without authority to enter this order because it is

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[8]See footnote 5, supra.

contrary and opposed to the final decree which long ago became final. That decree, it will be recalled, provides for the District to report back for further action respecting any remaining money at such time as it claims applicable statutes of limitation have run thereon. (R 27.) In petitioning that the money be returned to it the District is reporting back for further action exactly in accordance with the directions of that final decree. There is nothing contrary or opposed to it. In fact there is full compliance with it.

It is interesting to note that appellant in appealing from the final decree made this specification of error with regard to it: "The Court erred in reserving jurisdiction to make a further order in the cause." (R(9955) 58.) The decree was affirmed on appeal over such a specification of error. The right to make such a further order was thereby established and is *res adjudicata* here. To set aside this order would have the anomalous and undesirable result of perhaps forever preventing the closing of this proceeding.

Remaining specifications of error.

We believe all the remaining specifications of error made by appellant are without merit, are out of place in this appeal, and in fact were determined on the other prior appeals herein, such determinations being *res adjudicata* here.

Appellant contends in effect:

1. That this order had the effect of unlawfully giving abatement from mandatory taxation.

2. That the restraint in the final decree prohibiting bondholders from further asserting their claims is in error and should be lifted.

3. That appellant's bonds are still valid, binding and unpaid obligations of the District to the full amount of their face value and recourse should be accorded for full recovery thereon.

These specifications do not rightly go to the order appealed from here but to findings and orders contained in the interlocutory and final decrees. In fact these specifications of error sound very similar to the specifications set up in those two prior appeals (R(9242) 319, Pts. 1 and 7; and (R(9955) 59, Pts. 5, 6, 9, and 10). In any event if any unlawful abatement from mandatory taxation occurred, it occurred at the time of the interlocutory or final decrees, not with the entry of this order. Likewise the prohibitions against the bondholders further asserting their claims and attempting to collect the full face amount of their bonds were contained in those prior decrees and were determined to be valid in the appeals therefrom.

In fact appellant attempted to raise similar points in his appeal from the final decree and this Court held that those points had been adjudicated in the appeal from the interlocutory decree.[9] Even if there

[9]See footnote 2, supra.

is any merit to these points raised by appellant, and we are convinced there is not, this is no time or place to raise them.

CONCLUSION.

We have set forth the events leading up to this order. The District Court's indulgence of appellant is shown time and time again and it made a most exhaustive effort to prevent any injustice to him. It changed the originally proposed final decree to give appellant possibly the full period of the statute of limitations in which to participate, rather than to require him to do so within a period of one year as it legally could have done. For five (5) years he refused. Then the District petitioned the Court claiming the statute had run. But the Court authorized appellant to participate then if he would. It gave him time to secure legal advice. It gave him three opportunities to argue his contentions and each time advised him of its attitude in regard thereto. When he still refused it gave its order, but allowed him still another 45 days of grace though not of right.

Whatever excuses might be given for the appellant's uncertainty and equivocal actions during the hearings, certainly no such excuse can possibly exist for his failure and refusal to claim the money during the 45 day grace period. In the order it was made exceedingly clear, without any equivocation that if appellant did not surrender his bonds and accept the composition payment the District would be re-

funded the money. On some theory or belief of his own that he can some day recover the full face amount of his bonds appellant has seen fit to refuse to participate in this manner. The consequences were made clear in the order and of them appellant was well aware. With his eyes wide open he is gambling for the full amount. Whatever his claim in that regard may be, he has now certainly lost all right to the amount originally deposited for his benefit. The Court's order is thoroughly just and correct. Appellant neither deserves nor is entitled by law to any further allowances. *Interest reipublicae ut sit finis litium.*

Dated, Sacramento, California,
September 29, 1947.

Respectfully submitted,
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